

industry is required to provide the same level of capability for packet-mode technology as it does for circuit-mode technology. The unfortunate result is that the packet-mode standards that have been published are deficient.<sup>61</sup> From the carrier implementation perspective, most carriers have not even implemented the deficient published standards, let alone their own carrier-specific CALEA-compliant solutions. To compound matters, carriers have requested and consistently been granted extensions of time for packet-mode compliance pursuant to Section 107(c) of CALEA. Most carriers have stated in their extension requests that compliance with CALEA Section 103 for packet-mode technologies is not reasonably achievable because the carrier's packet-mode equipment manufacturers do not have a CALEA solution available.<sup>62</sup> Others

---

<sup>61</sup> It should be noted that packet-mode standards have not yet been published for many CALEA-covered packet-mode technologies and platforms.

<sup>62</sup> See e.g., CALEA packet-mode extension filings made by Palmer Mutual Telephone Company (November 14, 2003), Clarks Telecommunications Company (November 13, 2003); Hershey Cooperative Telephone Company (November 13, 2003); Roberts County Telephone Company and RC Communications, Inc (November 13, 2003), Arlington Telephone Company and Blair Telephone Company (November 13, 2003); Terril Telephone Cooperative (November 14, 2003); Royal Telephone Company (November 13, 2003), Griswold Cooperative Telephone Company (November 14, 2003); Griggs County Telephone Company (November 13, 2003); Moore & Liberty Telephone Company (November 13, 2003), Kennebec Telephone Co., Inc. (November 13, 2003); K & M Telephone Company (November 13, 2003); Consolidated Telecom, Inc. (November 13, 2003); Hamilton Telecommunications (November 14, 2003); Consolidated Telephone Company and Consolidated Teleco, Inc. (November 13, 2003); Rock County Telephone Company and Eastern Nebraska Telephone Company (November 13, 2003); Alpine Communications, L.C. (November 17, 2003); Dumont Telephone Company and Universal Communications of Allison, Inc (November 14, 2003); Hartington Telecommunications Co., Inc. (November 17, 2003), Nebraska Central Telephone

have stated that they require an extension because they are not aware of any solution that has been confirmed by the FBI as meeting CALEA's requirements<sup>63</sup> Still others

---

Company (November 13, 2003); Beresford Telephone Company (November 13, 2003); River Valley Telecommunications Coop (November 17, 2003); Ruthven Telephone Exchange (November 17, 2003), Stanton Telecom, Inc (November 13, 2003); Ayrshire Farmers Mutual Telephone Co (November 17, 2003); Northwest Telephone Cooperative Association (November 17, 2003); Independent Networks (November 17, 2003), Ayersville Telephone Company (November 17, 2003), Schaller Telephone Company (November 18, 2003); Cambridge Telephone Company (November 25, 2003); Three River Teleco (November 16, 2003), Ringsted Telephone Company (November 17, 2003), Wahkiakum West County Telephone Company (November 17, 2003); The Wabash Mutual Telephone Company (November 18, 2003); The Conneaut Telephone Company (November 18, 2003); Doylestown Communications Company (November 18, 2003); The Arthur Mutual Telephone Company (November 18, 2003); Benton Ridge Telephone Company (November 18, 2003), Middle Point Home Telephone Company (November 18, 2003), Ridgeville Telephone Company (November 18, 2003); The Sherwood Mutual Telephone Association (November 18, 2003), McClure Telephone Company (November 18, 2003), Tenino Telephone Company (November 17, 2003); Kalama Telephone Company (November 17, 2003); James Valley Cooperative Telephone Company (November 18, 2003); Pioneer Telephone Company (November 18, 2003), Whidbey Telephone Company (November 18, 2003); Hat Island Telephone Company (November 18, 2003), Western Wakhikaum County Telephone Company (November 17, 2003); Nex-Tech Inc. (November 19, 2003).

<sup>63</sup> See CALEA packet-mode extension filings made by Sandwich Isle Communications, Inc (November 19, 2003), KanOkla Telephone Association, Inc. (November 19, 2003); Valliant Telephone Company (November 19, 2003); Cellular Network Partnership d/b/a Pioneer Cellular (November 19, 2003); Atlas Telephone Company (November 19, 2003), Pioneer Long Distance, Inc (November 19, 2003); Grand Telephone Company (November 19, 2003); Hinton Telephone Company (November 19, 2003); Margaretville Telephone Company, Inc. (November 19, 2003); Monon Telephone Company, Inc (November 19, 2003); Nicholville Telephone Company (November 19, 2003); Mid-Missouri Telephone Company (November 19, 2003) This premise does not support the grant of an extension, because the FBI is neither required nor authorized by CALEA to confirm that a solution meets the requirements of CALEA.

state that they require an extension because the technical standard that is purportedly being developed by industry is unlikely to become final due to objections by the FBI.<sup>64</sup>

One of the reasons that CALEA-compliant solutions for packet-mode technologies are perceived to be unavailable is that manufacturers have been reluctant to develop them until clear standards have emerged. This has permitted carriers to claim that their extension requests are based on an absence of technology, rather than the absence of an industry standard. As a result, carriers mistakenly qualify for extensions of time based on their own inaction in developing standardized and non-standardized CALEA solutions. CALEA was never intended to countenance such trends of indefinite compliance.

There are alternative solutions for packet-mode technologies currently available that would allow carriers to meet their CALEA Section 103 obligations. As the Commission has previously acknowledged in evaluating extension requests, the absence of standards versus the absence of technology are separable issues.<sup>65</sup> The Commission has further acknowledged that it is possible that, in the absence of an

---

<sup>64</sup> See, e.g., CALEA packet-mode extension filings made by Washington RSA No. 8 Limited Partnership (November 19, 2003); Eastern Sub-RSA Limited Partnership (November 20, 2003). Again, this premise does not support the grant of an extension, because the FBI neither controls the standard-setting process nor has the ability or authority to prevent a technical standard from becoming final.

<sup>65</sup> See *In the Matter of Petition for the Extension of the Compliance Date Under Section 107 of the Communications Assistance for Law Enforcement Act by AT&T Wireless Services, Inc. et al.*, FCC 98-223, 1998 WL 601289, ¶ 25 (1998) ("1998 Section 107 Extension Order").

industry standard, CALEA-compliant technology could nonetheless be developed.<sup>66</sup> The fact that Section 107(a)(3) of CALEA clearly states that the absence of technical requirements or standards for implementing CALEA Section 103 does not relieve a carrier, manufacturer, or telecommunications support service provider of its CALEA Section 103 or 106 obligations to comply with CALEA confirms that Congress recognized this possibility.<sup>67</sup>

The CALEA implementation process (both with respect to packet-mode technologies and generally) is not working because there is no specific, concrete implementation and compliance plan. Extensions have become the rule rather than the exception for packet-mode compliance. CALEA is too important to be left to indefinite compliance deadlines. Accordingly, Law Enforcement requests that the Commission impose implementation deadlines and benchmark filings to phase in CALEA packet-mode compliance, just as the Commission has previously required in connection with other important public safety mandates, such as E911.<sup>68</sup> Law Enforcement also requests

---

<sup>66</sup> *Id.*

<sup>67</sup> See 47 U.S.C. § 1006(a)(3).

<sup>68</sup> See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (CC Docket No. 94-102). This approach was also recently adopted by the FCC in connection with wireless telephone compliance with the Hearing Aid Compatibility Act of 1988. See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003) (reconsideration pending), *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, WT Docket No. 01-309, DA 04-630 (rel. Mar. 8, 2003).

that the Commission codify in its rules the CALEA packet-mode compliance phase-in benchmarks and deadlines and related filing requirements that the Commission adopts herein, just as the Commission did with the benchmarks and deadlines it adopted in the E911 docket.<sup>69</sup>

Although the Commission has in the past been reluctant to adopt milestones or benchmarks to monitor carriers' CALEA implementation efforts, the record in the CALEA implementation docket clearly demonstrates that such an approach is more than warranted at this time. The Commission devoted substantial resources and the full weight of its authority toward implementing the E911 mandate, including but not limited to establishing a system of compliance benchmarks and deadlines, strictly enforcing those benchmarks and deadlines, and imposing steep fines and other penalties for non-compliance with those benchmarks and deadlines and the E911 mandate generally. This rigorous approach proved highly successful, and is facilitating full implementation of E911 in a timely manner. CALEA implementation deserves an equally strict compliance plan

A specific phased-in packet-mode compliance plan will provide certainty to the telecommunications industry in developing and installing CALEA-compliant packet-mode solutions, and help law enforcement meet its public safety and national security obligations. Law Enforcement also believes this approach will expedite the

---

<sup>69</sup> See 47 C.F.R. § 20.18.

implementation of CALEA-compliant solutions, while still providing carriers with the flexibility to conform their solutions to industry-adopted standards or develop standards of their own

The specific CALEA phase-in proposal for achieving packet-mode compliance set forth below is modeled after the phase-in plan adopted by the Commission for implementation of the E911 mandate. Although achieving compliance for the E911 program is being accomplished under a single phase-in schedule, the Commission may need to establish separate phase-in schedules for separate packet-mode services in order to achieve CALEA packet-mode compliance.

**A. The Commission *Public Notice* Detailing the Packet-Mode Compliance Plan**

The Commission should issue a *Public Notice* modifying the policies and procedures for CALEA Section 103 compliance and Section 107(c) extensions previously announced in its April 25, 2000 and September 28, 2001 *Public Notices*. The *Public Notice* should require all CALEA-covered carriers to file a letter with the Commission (with a copy to the FBI's CALEA Implementation Unit) no later than 30 days after the date of the *Public Notice* advising the Commission of their CALEA packet-mode compliance status.<sup>70</sup> In addition, the Commission should advise carriers that, subject to strict

---

<sup>70</sup> The contents of the carrier's letter would be expected to identify that the carrier falls into one of the following three categories.

commitments on the part of the requesting carrier, the Commission will entertain a carrier's request for a limited and conditional extension of time for packet-mode compliance. Any carrier that believes it requires such an extension would be directed to file a letter with the Commission (with a copy to the FBI's CALEA Implementation Unit) no later than 30 days after the date of the *Public Notice* requesting a limited and conditional extension for CALEA packet-mode compliance until a specified date or the compliance deadline specified by the Commission (whichever is sooner), and committing to strict compliance with the CALEA packet-mode compliance interim benchmarks established in the *Public Notice* as a condition of the extension grant.

The *Public Notice* should also establish CALEA packet-mode compliance interim benchmarks for carriers that are granted limited and conditional extensions of time; mandate the filing of progress reports in connection with the CALEA packet-mode compliance interim benchmarks; remind carriers that they are required to comply with CALEA and will be subject to enforcement action for failing to comply with their

- 
1. The carrier is offering, or plans to offer, a CALEA-covered service using packet-mode technology and is CALEA compliant; or
  2. The carrier is offering, or plans to offer, a CALEA-covered service using packet-mode technology but is not CALEA compliant; or
  3. The carrier is not currently offering, and does not plan to offer, a CALEA-covered service using packet-mode technology, but in the event the carrier does later decide to offer such a service it will comply with the CALEA requirements as of the date of the commercial launch of the service.

CALEA obligations; and outline the consequences and penalties for a carrier's non-compliance with the CALEA packet-mode compliance interim benchmarks and the CALEA packet-mode compliance deadline

Finally, the *Public Notice* should make clear that any carrier that does not file a letter within 30 days after the date of the *Public Notice* requesting a limited and conditional extension for CALEA packet-mode compliance and agreeing to strict compliance with the CALEA packet-mode compliance interim benchmarks will not receive an extension of time, and that if a carrier fails to meet an interim benchmark or submit the proper showing its limited and conditional extension will expire automatically as of the date of that failure.<sup>71</sup>

**B. Commission Action on Carriers' Filings in Response to the *Public Notice***

The Commission, in consultation with the FBI's CALEA Implementation Unit, will send a letter to the requesting carrier that (1) acknowledges the carrier's statements concerning its current CALEA packet-mode compliance status, (2) confirms the carrier's agreement to strictly comply with the CALEA packet-mode compliance interim benchmarks and CALEA packet-mode compliance deadline established in the *Public Notice* as a condition of its extension; (3) advises the carrier that if it fails to meet the

---

<sup>71</sup> This approach would replace the current "preliminary determination" system for CALEA packet-mode compliance extensions, which grants the extension relief before the carrier has in fact qualified for it.



CALEA packet-mode compliance interim benchmarks and/or the CALEA packet-mode compliance deadline, it will be deemed to be out of compliance with the conditions of its extension and that its limited and conditional extension of time will expire automatically as of the date of the failure, (4) reminds the carrier that it is responsible for the continuing accuracy and completeness of the information provided in its CALEA filings; and (5) advises the carrier that it could be subject to Commission enforcement action if it does not adhere to the conditions of its limited and conditional extension.<sup>72</sup>

### **C. The First CALEA Packet-Mode Compliance Interim Benchmark**

The Commission should require that, as a condition of its limited conditional extension, each carrier must, no later than six months after the date of the *Public Notice*, file an officer's certification with the Commission (with a copy to the FBI's CALEA Implementation Unit) that identifies the technical intercept standard that the carrier will employ for CALEA packet-mode compliance. The carrier must commit to either an intercept standard published by a standard-setting body pursuant to CALEA Section

---

<sup>72</sup> Consistent with the Commission's processes, the violation would be automatically referred to the Commission's Enforcement Bureau. Penalties could include imposition of any directives to the carrier intended to facilitate CALEA packet-mode compliance that may be warranted under the circumstances and/or monetary forfeitures. It should be noted that although such an automatic referral will trigger an investigation, it neither determines or prejudges the result, nor constitutes a final judgment that the carrier has violated a rule or the Commission's packet-mode compliance plan. The carrier will be afforded all the rights to which it is entitled by statute or under the Commission's rules.

107, or a *bona fide* intercept standard established by the carrier and its manufacturer(s). If a carrier commits to establishing its own *bona fide* intercept standard, the carrier's filing must include the specifications of that standard at a level of detail that is comparable to that of an industry-published standard (such as the Standard J-STD-025A used for circuit-mode CALEA compliance)

The Commission, in consultation with the FBI's CALEA Implementation Unit, should evaluate the validity of the carrier's first interim benchmark filing (*i.e.*, that it clearly identifies the intercept standard to be used by the carrier and, where applicable, includes the specifications of that standard at a level of detail that is comparable to that of an industry-published standard). The Commission should then advise the carrier of its determination regarding the carrier's compliance with the conditions of its limited and conditional extension of time.

In cases where the carrier has not met the conditions of its limited and conditional extension of time (*e.g.*, the carrier's filing was untimely, the carrier's self-produced intercept standard was insufficiently detailed, etc.), the carrier should be advised (1) why it has not met the conditions of its limited and conditional extension of time; (2) that it is deemed to be out of compliance with respect to CALEA packet-mode compliance generally and the conditions of its extension; (3) that its limited and conditional extension of time is no longer valid; and (4) that the violation of the

conditions of its extension grant will be referred to the Commission's Enforcement Bureau for possible enforcement action.

If a carrier fails to make its first CALEA packet-mode compliance interim benchmark filing, the Commission should notify the carrier that (1) it has not met the conditions of its limited and conditional extension of time; (2) its limited and conditional extension of time is no longer valid; (3) it is deemed to be out of compliance with respect to CALEA packet-mode compliance generally and the conditions of its extension, and (4) the violation of the conditions of its extension grant will be referred to the Commission's Enforcement Bureau for possible enforcement action.<sup>73</sup>

#### **D. The Second CALEA Packet-Mode Compliance Interim Benchmark**

The Commission should require that, as a condition of its limited conditional extension, each carrier must, no later than twelve months after the date of the *Public Notice*, file an officer's certification with the Commission (with a copy to the FBI's CALEA Implementation Unit) confirming that the carrier's manufacturer has developed and made available the intercept solution, and the intercept solution conforms to the intercept standard identified in the carrier's first interim benchmark filing.

---

<sup>73</sup> Again, consistent with the Commission's processes, the violation would be automatically referred to the Commission's Enforcement Bureau, and penalties could include imposition of any directives to the carrier intended to facilitate CALEA packet-mode compliance that may be warranted under the circumstances and/or monetary forfeitures.

In addition, as a condition of its limited conditional extension, the carrier must, no later than twelve months after the date of the *Public Notice*, file with the Commission (with a copy to the FBI's CALEA Implementation Unit) a certificate from an officer of the carrier's equipment manufacturer(s) confirming that the manufacturer(s) developed and made available the CALEA-compliant intercept solution, and the solution conforms to the intercept standard identified in the carrier's first interim benchmark filing.

The Commission, in consultation with the FBI's CALEA Implementation Unit, should evaluate the validity of the carrier's second interim benchmark filing and the manufacturer's filing (*i.e.*, that the filings each clearly identify the intercept solution that has been developed and made available by the manufacturer, and confirm that the intercept solution that has been developed and made available matches the intercept standard identified in the carrier's first interim benchmark filing). The Commission should then advise the carrier of its determination regarding the carrier's compliance with the conditions of its limited and conditional extension of time

In cases where the carrier has not met the conditions of its limited and conditional extension of time (*e.g.*, the carrier's filing was untimely, there was no manufacturer's certification filed, the carrier's manufacturer did not develop and make available the intercept solution as represented, etc.), the carrier should also be advised (1) why it has not met the conditions of its limited and conditional extension of time; (2) that it is deemed to be out of compliance with respect to CALEA packet-mode

compliance generally and the conditions of its extension, advise the carrier that its limited and conditional extension of time is no longer valid; and (3) that the violation of the conditions of its extension grant will be referred to the Commission's Enforcement Bureau for possible enforcement action.<sup>74</sup> In cases where the carrier's manufacturer fails to meet the conditions of the carrier's limited and conditional extension of time, the manufacturer should also be advised why the manufacturer has not met the conditions of the carrier's limited and conditional extension of time.

If a carrier or a manufacturer fails to make the second CALEA packet-mode compliance interim benchmark filing, the Commission should notify the carrier and manufacturer that (1) they have not met the conditions of the carrier's limited and conditional extension of time; (2) the carrier's limited and conditional extension of time is no longer valid; (3) the carrier is deemed to be out of compliance with respect to CALEA packet-mode compliance generally and the conditions of its extension; and (4) the carrier and/or manufacturer's violation of the conditions of the carrier's extension grant will be referred to the Commission's Enforcement Bureau for possible enforcement action

---

<sup>74</sup> Again, consistent with the Commission's processes, the violation would be automatically referred to the Commission's Enforcement Bureau, and penalties could include imposition of any directives to the carrier intended to facilitate CALEA packet-mode compliance that may be warranted under the circumstances and/or monetary forfeitures

**E. The CALEA Packet-Mode Compliance Deadline**

The Commission should require that carriers install and deploy their CALEA packet-mode intercept solutions throughout their networks by no later than fifteen months after the date of the Commission's *Public Notice* ("CALEA Packet-Mode Deadline") The Commission should further require any carrier that was granted a limited and conditional extension of time to file an officer's certification with the Commission no later than ten business days after the CALEA Packet-Mode Deadline confirming that, as of the CALEA Packet-Mode Deadline date, the carrier had installed and deployed its CALEA packet-mode intercept solution throughout its network

Any carrier that fails to timely file its required officer's certification with the Commission should be presumed to be non-compliant with respect to its CALEA packet-mode obligations and, consistent with the Commission's processes, would be automatically referred to the Commission's Enforcement Bureau for possible enforcement action In addition, any carrier that timely files its required officer's certification with the Commission but indicates in that certification a compliance date that is *after* the CALEA Packet-Mode Deadline date will be presumed to be non-compliant with respect to its CALEA packet-mode obligations and, consistent with the

Commission's processes, would be automatically referred to the Commission's Enforcement Bureau for possible enforcement action<sup>75</sup>

Moreover, if the representations made in the officer's certification are subsequently shown to be false (*e.g.* the solution has not in fact been installed and deployed, or solution is unable to provide Commission-required capabilities to law enforcement), consistent with the Commission's processes, the carrier would be automatically referred to the Commission's Enforcement Bureau for possible enforcement action, and penalties could include imposition of any directives to the carrier intended to facilitate CALEA packet-mode compliance that may be warranted under the circumstances and/or monetary forfeitures.

#### **F. Further Extensions of the CALEA Packet-Mode Compliance Deadline**

Although Section 107(c) of CALEA does not contain a restriction on the number extensions that a carrier can request, as discussed above, extensions have unfortunately become the rule rather than the exception for packet-mode compliance. The Commission should take action to break the seemingly endless cycle of packet-mode extensions, and remove the extension expectancy/entitlement held by some, carriers. Accordingly, Law Enforcement requests that the Commission make clear that it will not

---

<sup>75</sup> Penalties for filings that are determined by the Commission's Enforcement Bureau to be untimely or otherwise deficient or non-compliant could include imposition of any directives to the carrier intended to facilitate CALEA packet-mode compliance that may be warranted under the circumstances and/or monetary forfeitures

entertain petitions for additional extensions of time or other relief of the CALEA Packet-Mode Deadline (including requests for modification of the compliance requirements, benchmarks and/or deadline) absent extraordinary circumstances.<sup>76</sup> In Law Enforcement's view, this is the only way to truly compel carriers, equipment/solution vendors, and industry standards-setting organizations to develop and deploy industry-wide and/or carrier-specific CALEA solutions and achieve true CALEA packet-mode compliance.

In addition, Law Enforcement asks the Commission to adopt specific and strict rules for any further extensions of the Packet-Mode Deadline.<sup>77</sup> These rules should require that any extension petition be specific, focused, and limited in scope,

---

<sup>76</sup> This approach is consistent with the approach taken by the Commission concerning waivers and extensions of the compliance benchmarks and deadlines for E911 implementation. As the Commission aptly stated in its *E911 Fourth Memorandum Opinion and Order* in addressing the issue of waiver and extension requests in the E911 docket, “. . . carriers [are expected] to work aggressively with technology vendors and equipment suppliers to implement [Phase II of E911], and to achieve full compliance as soon as possible. Carriers should not expect to defer providing a location solution if one is available and feasible. If a carrier's preferred method location solution is not available or will not fully satisfy the [E911] rules . . . the carrier [is] expected to implement another solution that does comply with the rules.” See *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17458 ¶ 45. It should be noted that in any event, regardless of the grant of a further extension of time to comply, the carrier would be referred to the Commission's Enforcement Bureau for failure to comply by the CALEA Packet-Mode Deadline.

<sup>77</sup> In the 1998 *Section 107 Extension Order*, the Commission declined to propose specific rules for extension requests because it was then unclear to the Commission whether extension requests would be forthcoming. See 1998 *Section 107 Extension Order* at ¶ 7. Unfortunately, not only did such requests arrive, they have become the norm.



demonstrate a clear path to full CALEA packet-mode compliance, and specify all solutions considered or implemented prior to the Packet-Mode Deadline and why those solutions proved unacceptable<sup>78</sup>. The rules should make clear that carriers are not permitted to argue in any petition for further extension of the Packet-Mode Deadline that the service for which a further extension is being sought is not covered by CALEA. The rules should also specify that any such additional extension will be extremely limited in duration (*e.g.*, a maximum of three months at a time). Finally, the rules should state that while the Commission may consider the totality of the carrier's individual circumstances, including the carrier's compliance efforts, among the things

---

<sup>78</sup> In order to confirm the genuineness of a carrier's compliance efforts and foster timely compliance, a carrier should be required to provide as part of its request for further extension of the Packet-Mode Deadline detailed information demonstrating proactive and timely consultation with the manufacturer(s) of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of ensuring that current and planned equipment, facilities, and services comply with the capability requirements of CALEA Section 103 (including the dates of such consultations and the names and titles of the individuals with whom the carrier consulted). Such detailed information would include, at a minimum, (1) the date on which service design was initiated for a particular service offering, (2) efforts made at the service design stage demonstrating the carrier's effort to comply with the requirements of CALEA Section 103 for the subject service offering; (3) details regarding the costs and other business burdens associated with CALEA compliance for the subject service offering, (4) technical challenges encountered by the carrier with respect to CALEA compliance for the subject service offering; and (5) a detailed discussion of how such costs, business burdens, technical challenges, etc. affected the carrier's timeline for full CALEA compliance for the subject service offering. A carrier should also be required to provide a signed statement from the manufacturer(s) of its telecommunications transmission and switching equipment and its providers of telecommunications support services corroborating the carrier's representations concerning consultation.

that will not be considered justification for an additional extension are the failure of a standards-setting body to publish a standard for CALEA packet-mode compliance, a vendor's failure to develop, build and/or deliver the solution by the second interim benchmark date or the Packet-Mode Deadline,<sup>79</sup> or a claim under Section 107(c)(2) that a solution is not reasonably achievable (if made after the second interim benchmark deadline).

---

<sup>79</sup> This is consistent with the Commission's approach in the E911 docket, where the Commission specifically rejected commenting parties' suggestion that they be deemed to be in compliance with the handset deployment rules if they placed timely orders for ALI-capable handsets. See *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17456 ¶ 38 (2000) ("E911 Fourth Memorandum Opinion and Order"). The Commission also advised in connection with waivers granted in the E911 docket that "an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance." See *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Request for Waiver by AT&T Wireless Services, Inc., Order, 16 FCC Rcd 18253, 18261 ¶ 26 (2001) ("AT&T Waiver Order"); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Wireless E911 Phase II Plan of Nextel Communications, Inc., Order, 16 FCC Rcd 18277, 18288 ¶ 36 (2001) ("Nextel Waiver Order"); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Request for Waiver by Cingular Wireless LLC, Order, 16 FCC Rcd 18305, 18313 ¶ 27 (2001) ("Cingular Waiver Order"); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Request for Waiver by Sprint Spectrum L.P. d/b/a Sprint PCS, Order, 16 FCC Rcd 18330, 18340 ¶ 32 (2001) ("Sprint Waiver Order"); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Request for Waiver by Verizon Wireless, Order, 16 FCC Rcd 18364, 18377 ¶ 35 (2001) ("Verizon Waiver Order").

Consistent with the requirements of Section 107(c) of CALEA,<sup>80</sup> the Commission should, in consultation with the FBI, conduct an individualized review of each extension petition filed, and issue a detailed order granting or denying the petition. The Commission should specify in the rules it adopts for any further extensions of the Packet-Mode Deadline that an extension beyond the Packet-Mode Deadline is not effective unless and until the Commission takes action affirmatively granting such an extension (*i.e.*, there is no preliminary determination granting an extension upon the filing of a petition)

**IV. THE COMMISSION SHOULD ADOPT GENERAL RULES THAT PROVIDE FOR THE ESTABLISHMENT OF BENCHMARKS AND DEADLINES FOR COMPLIANCE WITH FUTURE CALEA-COVERED TECHNOLOGIES AND SERVICES**

Law Enforcement also asks the Commission to exercise its authority under Section 229(a) of the Communications Act to promulgate general rules that provide for the establishment of benchmarks and deadlines for CALEA compliance with future CALEA-covered technologies and services that are comparable to those requested above for CALEA packet-mode compliance. This approach will avoid the types of implementation and compliance problems and delays experienced in connection with packet-mode technologies, and facilitate carriers' implementation of CALEA-compliant solutions sooner, while still providing carriers with the flexibility to conform to industry-adopted standards or devise carrier-specific solutions of their own. Law

---

<sup>80</sup> 47 U.S.C. § 1006(c)

Enforcement also believes that establishing general rules now will enable the Commission to act expeditiously in setting compliance benchmarks and deadlines for future CALEA-covered technologies.

Law Enforcement also asks the Commission to adopt rules requiring that a carrier already have installed and deployed a CALEA solution to assist with lawfully-authorized electronic surveillance of a CALEA-covered service at the time the carrier rolls out that CALEA-covered service to the public, not at some unknown subsequent date.<sup>81</sup> Otherwise, criminals, terrorists, and spies will gain potentially large windows of opportunity to evade lawful surveillance.

In the event that a carrier plans to begin offering a new service and is unsure whether that service is subject to CALEA, the Commission should require the carrier to file a request for clarification or declaratory ruling that seeks Commission guidance on CALEA's applicability to the proposed service offering. It is the Commission, not carriers, that is authorized to determine whether CALEA applies to a given service. Requiring carriers to obtain a Commission determination prior to service roll-out will prevent carriers from making a unilateral determination that CALEA does not apply to the service.

---

<sup>81</sup> This approach is not only consistent with the spirit of CALEA, but is also the more cost-effective approach to CALEA implementation for CALEA-covered technologies, because it is far more efficient to craft a solution during the service and product design stage than after product manufacturing and service rollout has occurred. Thus, the requirement will benefit both law enforcement and carriers.

**V. THE COMMISSION SHOULD ADOPT GENERAL RULES CONCERNING EXTENSIONS OF ANY BENCHMARKS AND DEADLINES FOR COMPLIANCE WITH FUTURE CALEA-COVERED TECHNOLOGIES AND SERVICES ESTABLISHED BY THE COMMISSION**

As discussed herein, extensions have unfortunately become the rule rather than the exception for CALEA compliance. The Commission should take action to prevent the seemingly endless cycle of extensions that have consistently plagued the CALEA compliance process, and remove the perception of an extension expectancy/entitlement for CALEA compliance. Accordingly, the Commission should adopt specific rules for requests for additional extensions of time or other relief of any compliance benchmarks and deadlines set by the Commission for compliance with future CALEA-covered technologies and services. The Commission should also make clear that requests for additional extensions of time or other relief (including requests for modification of the compliance requirements, benchmarks and/or deadline) will not be routinely granted, and will generally not be granted absent extraordinary circumstances.<sup>82</sup> Again, in Law Enforcement's view, this is the only way to truly compel carriers, equipment/solution vendors, and industry standards-setting organizations to develop and deploy industry-wide and/or carrier-specific CALEA solutions and achieve true CALEA compliance.

---

<sup>82</sup> Again, this approach is consistent with the approach taken by the Commission concerning waivers and extensions of the compliance benchmarks and deadlines for E911 implementation. See *E911 Fourth Memorandum Opinion and Order* at 17458 ¶ 44.